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Ruling backs Mashpee tribe's land claims

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Tribal chairman Cedric Cromwell, left, and chief Vernon Lopez chat with guests as members of the Mashpee Wampanoag Tribe hosted an open house last May for residents of Taunton at the high school to showcase the tribe's plans for a casino in the town.

Cape Cod Times File/Steve Heaslip

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By George Brennan
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 February 13, 2013

The Mashpee Wampanoag Tribe's application to have 146 acres taken into federal trust in Taunton for an Indian casino can move forward under a ruling by the federal Bureau of Indian Affairs.

The decision does not completely clear the path for the tribe's proposed \$500 million casino, but it does eliminate a significant hurdle.

In a letter to the tribe dated Feb. 7, Assistant Secretary Kevin Washburn wrote that a "preliminary advisory opinion" indicates the Taunton land and 170 acres in Mashpee qualify as an initial reservation. The exemption is part of the Indian Gaming Regulatory Act that would allow the tribe to offer gambling on the land if other criteria are met.

In a press release, tribal council Chairman Cedric Cromwell called the letter "another huge step forward toward the development of a first-class destination resort casino in Taunton."

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"They truly understand how important it is for our people to have land, to maintain our history, our language and our culture. This will enable us to fully operate as a sovereign tribal government, to secure the resources necessary to support ourselves, and to provide services such as housing, health care and education to our people," he said.

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The ruling is evidence that the BIA is convinced the tribe has "significant historic and modern ties" to the land.

"It further demonstrates an Interior Department that is more willing to move quickly and definitively on these types of determinations," Steven Light, an Indian gaming expert at the University of North Dakota, said. "Put this federal action together with the groundwork the tribe has laid — land option, local political support, conversations with the state, application for land into trust — and the trajectory points toward success for the Mashpee."

It's also significant because, if the application is approved completely, it gives the tribe authority to offer Class II gaming — bingo and so-called bingo slots — on the land with or without state approval. With a compact between the tribe and state, the Mashpee Wampanoag would be entitled to offer Class III gambling, which includes slots and table games like blackjack.

A historian hired by the tribe, along with two tribe members, filed a report outlining the ties to land in Taunton. In essence, the document makes the case that the Mashpee Wampanoag is the only remaining mainland tribe of what was once the Pokanoket Nation. The Pokanoket homeland stretched from Rhode Island, east to the Cape and Islands and north to Gloucester covering all of Southeastern Massachusetts.

Cohannut, which encompasses modern Taunton, Lakeville, Middleboro and Bridgewater, was an important "resource rich" area used by the Wampanoag for hunting, gathering and planting before English settlers took over the region, according to the tribe's historical account. After the bloody and deadly King Philip's War in 1675 and 1676, the Mashpee tribe, which stayed neutral, took in surviving Indians who weren't sold off as slaves, according to the report.

The Mashpee tribe's claims to the land are disputed by state-recognized tribes and will likely be challenged in court, but the BIA's approval is a significant step for the Mashpee Wampanoag — one that critics have said they doubted would ever happen.

Next, the tribe must convince the BIA that a 2009 U.S. Supreme Court ruling, known as the Carciere decision, does not apply to them, Light said. That ruling called into question the federal government's authority to take land in trust for tribes recognized after 1934, the year of the Indian Reorganization Act, but left open the door that tribes might be able to show they were under federal jurisdiction.

That's one of several "big hurdles" remaining for the tribe, Light said.

Though the tribe was not federally recognized until 2007, it has made a legal argument that, among other things, an agreement with King George III to protect Mashpee Indian land should have been enforced by the United States.

The BIA has yet to rule on whether Carciere applies, but in a similar case the Cowlitz Tribe in Washington State was recently found to be under federal jurisdiction and its land was taken into trust. That decision was challenged immediately and the ongoing lawsuit is being watched closely by the Mashpee tribe and others across the country.

An environmental review must also be completed by the Mashpee Wampanoag before the BIA makes its final decision on the tribe's land application.

KG Urban Enterprises, a developer that hopes to build a commercial casino in New Bedford, declined to comment on the BIA letter.

Elaine Driscoll, a spokeswoman for the Massachusetts Gaming Commission, said the BIA's action is one of several factors the commission will take into effect when it makes a decision next month whether to open Southeastern Massachusetts to commercial bids.

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rejected by the BIA.

"We remain focused on reaching an agreement that is fair to the commonwealth and the tribe," said Jason Lefferts, a spokesman for the state Executive Office of Housing and Economic Development.

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